IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DOMINICK SERGIO MALDONADO, Appellant.	No. 37090-5-II ORDER AMENDING OPINION

The unpublished opinion in this case was filed on June 16, 2009. This opinion is hereby amended as follows:

On page 1, the first sentence that reads:

Dominick Maldonado appeals four of his counts of first degree assault convictions.

is deleted. The following sentence is inserted in its place:

Dominick Maldonado appeals four of his six first degree assault convictions.

IT IS SO ORDERED.

DATED this _____day of _____, 2009.

Penoyar, J.

Van Deren, C.J.

Quinn-Brintnall, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DOMINICK SERGIO MALDONADO, Appellant.	No. 37090-5-II UNPUBLISHED OPINION

Penoyar, J. — Dominick Maldonado appeals four of his counts of first degree assault convictions. The sole argument that Maldonado raises fails because there was sufficient evidence to support a finding that he intended to inflict great bodily harm when he opened fire in a crowded shopping mall. We affirm all four convictions.

FACTS

On November 20, 2005, Maldonado entered the Tacoma Mall armed with a large caliber rifle, a semi-automatic hand gun with an extended magazine, and approximately 400 rounds of ammunition. Around the time he entered the mall, 911 dispatchers received a call from Maldonado's phone. The caller told a dispatcher he was at the Tacoma Mall and instructed the dispatcher to "[f]ollow the screams." Report of Proceedings (RP) at 872. At approximately the same time, several of Maldonado's friends received a text message saying, "Today is the day that I will be heard. Today is the day that the world will feel my pain. Today is the day the world will feel my anger."[1] RP at 572.

At the mall, Maldonado twice walked past a T-Mobile kiosk where James Toomey and

[1] At trial, defense counsel conceded that the 911 call came from Maldonado's phone and never argued that the call or the text messages were made by anyone other than Maldonado.

Daniel Torres were working. Each time, Toomey asked Maldonado if he would like to purchase a cellular phone. Each time, Maldonado looked at Toomey, smiled, and shook his head "no." RP at 84. A short time later, Torres saw Maldonado shrug off his coat and lift his rifle. Torres saw Maldonado point the rifle toward the mall concourse where there were "many people" and open fire. RP at 107. Both Toomey and Torres dropped behind the kiosk. After hearing Maldonado fire several shots, Toomey and Torres looked over the kiosk wall in an attempt to locate him. Torres saw Maldonado walk past the kiosk, turn, and fire at the kiosk three times. As gunshots hit the kiosk, flying debris injured Toomey.

Francis Stiles was also near the T-Mobile kiosk when Maldonado opened fire. When Stiles heard gun shots, he began to drop to the floor. Before he reached the floor, however, Maldonado shot Stiles in the shoulder. Roberta Davis, who was also in the mall concourse that day, heard loud noises and saw flashes of lights. Davis and her husband began to run. As she ran toward the exit, she felt a burning pain in her leg as a bullet entered her thigh. Maldonado then fired several shots at another mall employee, Brendan McKown. Maldonado shot McKown three times in the midsection, leaving him paralyzed.

Maldonado then entered a Sam Goody music store, where he took several people hostage. Maldonado called 911 for a second time and demanded a hostage negotiator. After extensive conversations with the hostage negotiator, police, media, and friends, Maldonado surrendered to police officers.

On November 21, 2005, the State charged Maldonado by information with eight counts of first degree assault and four counts of first degree kidnapping, each with a firearm enhancement. Additionally, the State charged Maldonado with two counts of first degree unlawful possession of

a firearm. On December 8, 2005, the State filed an amended information in which it amended one count of first degree assault to attempted first degree murder and added a single count of first degree assault. Both counts included firearm enhancements.

Trial began on August 14, 2007. On October 2, 2007, the jury convicted Maldonado of six counts of first degree assault, including the assaults of Torres, Toomey, Stiles, and Davis. The jury also convicted Maldonado of four counts of first degree kidnapping, two counts of first degree unlawful possession of a firearm, two counts of second degree assault, and one count of second degree attempted murder. All of Maldonado's convictions included firearm enhancements.

On November 2, 2007, the trial court sentenced Maldonado to over 163 years' confinement. The trial court imposed consecutive standard range sentences for all of the serious violent convictions and consecutive sentences for the 13 firearm enhancements.

On November 28, 2007, Maldonado filed a timely notice of appeal. On appeal, he challenges only the sufficiency of the evidence supporting his convictions for the first degree assaults of Torres, Toomey, Stiles, and Davis.

ANALYSIS

Maldonado argues that there was insufficient evidence to convict him of the first degree assaults of Torres, Toomey, Davis, and Stiles. He claims that because there was little evidence to suggest that he targeted the victims, there was insufficient evidence to prove that he intended to inflict great bodily harm. This argument fails because the State presented sufficient evidence that Maldonado intended to inflict great bodily harm, including evidence that he made several

threatening statements, repeatedly fired into the mall concourse, and, in the case of Torres and Toomey, looked directly at the victims before firing.

I. Standard of Review

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom." *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

II. Intent to Inflict Great Bodily Harm

The State must prove intent to inflict great bodily harm in order to establish first degree assault. RCW 9A.36.011.[2] The trier of fact ascertains "intent" by determining whether a person acts with the "objective or purpose to accomplish a result which constitutes a crime." RCW 9A.08.010(1)(a). The trier of fact should also look to "all of the circumstances of the case, including not only the manner and act of inflicting the wound, but also the nature of the prior relationship and any previous threats" to determine intent. *State v. Ferreira*, 69 Wn. App. 465,

[2] RCW 9A.36.011 provides in part: "(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm: (a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death." RCW 9A.04.110(4)(c) defines "[g]reat bodily harm" as "bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ[.]"

468-69, 850 P.2d 541 (1993) (quoting *State v. Woo Won Choi*, 55 Wn. App. 895, 906, 781 P.2d 505 (1989)).

Washington law requires that a person committing first degree assault act with a specific intent to inflict great bodily harm, but does not require that the specific intent match a specific victim. *State v. Wilson*, 125 Wn.2d 212, 218-19, 883 P.2d 320 (1994). In other words, if the defendant acts with intent to inflict great bodily harm against *any* person, it is legally insignificant whether he intended to cause great bodily harm to a *particular* person. *Wilson*, 125 Wn.2d at 218. Although a trier of fact may not presume specific intent, it may infer intent as a matter of logical probability from the evidence. *Delmarter*, 94 Wn.2d at 638.

Once the State establishes that the defendant intended to inflict great bodily harm, "the mens rea is transferred under RCW 9A.36.011 to any unintended victim." *Wilson*, 125 Wn.2d at 218. Thus, in *Wilson*, the Washington Supreme Court held that a defendant who fired into a bar and hit two bystanders demonstrated intent to inflict great bodily harm even when the ultimate victims were not his intended targets. *Wilson*, 125 Wn.2d at 218-19.

When a defendant fires a gun into a crowded area, courts have looked to the defendant's prior threats, behavior, and knowledge to determine if the defendant acted with intent to inflict great bodily harm. *See State v. Ferreira*, 69 Wn. App. at 468-69. Washington courts have found that a defendant acted with the requisite intent when the defendant made threats prior to the assault and when under the circumstances of the assault, great bodily harm was a "logical probability." *State v. Salamanca*, 69 Wn. App. 817, 826, 851 P.2d 1242 (1993) (citing

Delmarter, 94 Wn.2d at 638). *See also State v. Shelton*, 71 Wn.2d 838, 431 P.2d 201 (1967*)*; *Woo Won Choi*, 55 Wn. App. 895. In *Salamanca*, Division Three of this court held that there was sufficient evidence to support a jury's conclusion that the defendant acted as an accomplice to first degree assault with intent to inflict great bodily harm when the defendant pursued a vehicle at high speeds, allowing his companion to fire multiple shots into an occupied vehicle. 69 Wn. App. at 826. The court noted that Salamanca had been in several fights with the other car's driver and by "ke[eping] the [car] in close range" while his passenger fired into the vehicle, the defendant created a significant risk of "death or serious injury." *Salamanca*, 69 Wn. App. at 826. Similarly, in *Woo Won Choi*, Division One of this court determined that there was sufficient evidence to support a finding of intent to inflict great bodily harm when after an altercation, the defendant fired at close range into the victim's vehicle. 55 Wn. App. at 906-07.

Conversely, a court is unlikely to find intent to inflict great bodily harm when the evidence shows only that the defendant merely fired into an area in which it was apparent that it may have been occupied. *Ferreira*, 69 Wn. App. at 469. In *Ferreira*, Division Three of this court held that there was insufficient evidence to prove that the defendant acted with the requisite intent when he fired into a house. 69 Wn. App. at 469. The court placed particular emphasis on the trial court's refusal to enter findings that the defendant saw anyone inside the house or fired at "occupied areas" of the house. *Ferreira*, 69 Wn. App. at 469. We find that sufficient evidence supports the jury's conclusion that Maldonado intended to inflict great bodily harm in this case.

Viewing all of the evidence in a light most favorable to the State, there is sufficient evidence that Maldonado intended to inflict great bodily harm when he fired into the mall

concourse filled with holiday shoppers. Maldonado had specific knowledge that he was firing into an area occupied by several people. Torres testified that there were many people in the concourse when Maldonado opened fire. Additionally, Toomey testified that that section of the mall was filled with "a lot of families, a lot of children." RP at 74. Toomey testified that Maldonado fired his gun in the direction of "many people." RP at 107.

Additionally, there was sufficient evidence for the jury to conclude that Maldonado knew Toomey and Torres were in the T-mobile kiosk when he fired at it. Toomey and Maldonado interacted before Maldonado began shooting. During the exchange, Maldonado acknowledged Toomey by smiling and shaking his head at him. Furthermore, there was sufficient evidence to demonstrate that Maldonado's firing at the kiosk was deliberate. Torres testified that Maldonado walked pasted the kiosk, turned back, and fired three shots at it.

Finally, Maldonado's text messages and call to the 911 dispatcher support the jury's conclusion that Maldonado intended to inflict great bodily harm. Maldonado told the dispatcher to "[f]ollow the screams" and texted his friends that the "world will feel [his] pain." RP at 572, 872. Similar to the defendant in *Woo Won Choi*, who threatened the victim and then fired into his vehicle, Maldonado's threats in addition to his actions at the mall presented sufficient evidence for the jury to conclude that he acted with the intent to inflict great bodily harm.

After examining Maldonado's claims carefully, we affirm the convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Van Deren, C.J.

Quinn-Brintnall, J.